

Office of General Counsel Fiscal Year 2003 Annual Report

Statement from the General Counsel

I am pleased to transmit the Fiscal Year 2003 Annual Report for the Equal Employment Opportunity Commission's Office of General Counsel.

In FY 2003, the Commission's litigation program sent the nation a message that it will not tolerate unlawful discriminatory conduct in the workplace. Specifically, in FY 2003, EEOC obtained an unprecedented \$148,745,236 in monetary relief through litigation. This is the highest fiscal year monetary recovery in the history of the Commission's litigation program.

These results are the product of our dedicated legal staffs, who daily demonstrate their commitment to hard work and excellence. As General Counsel, I am proud to be part of a team that continues to redress past wrongs and shape the future in so many important ways for so many people.

Notwithstanding EEOC's achievements, we have much work ahead of us. Unlawful discrimination anywhere remains a threat to equality everywhere. Accordingly, we will continue to strive to obtain meaningful relief for victims of discrimination and achieve equality in the workplace.

I invite you to read this Fiscal Year 2003 Office of General Counsel Annual Report and learn about how the Commission's litigation program is creating equality of opportunity for those who live and work in the United States.

**Eric S. Dreiband
General Counsel
U.S. Equal Employment Opportunity Commission**

TABLE OF CONTENTS

- I. Structure and Function of the Office of General Counsel
 - A. Mission of the Office of General Counsel
 - B. Headquarters Programs and Functions
 - 1. General Counsel
 - 2. Deputy General Counsel
 - 3. Litigation Management Services
 - 4. Systemic Litigation Services

5. Internal Litigation Services
6. Litigation Advisory Services
7. Appellate Services
8. Research and Analytic Services
9. Administrative and Technical Services

C. Field Legal Units

II. Summary of Fiscal Year 2003 Accomplishments

- A. Making a Difference in Today's Civil Rights Practice
- B. Summary of District Court Litigation Activity
- C. Class Litigation
 1. Large Class Litigation
 2. Harassment of a Class of Women
 3. Harassment of a Class of Men
 4. Harassment Based on Race or National Origin
 5. Hiring and Assignment Discrimination
 6. Discriminatory Discharge
- D. Protecting Access to Enforcement Mechanisms
- E. The Power of One: Making a Difference Through Individual Claims
 1. Title VII
 - a. Sex Discrimination
 - b. Race Discrimination
 - c. National Origin Discrimination
 - d. Religious Discrimination
 2. Age Discrimination in Employment Act
 3. Americans with Disabilities Act
- F. Developing the Law
 1. Supreme Court Decision
 2. Courts of Appeals Decisions
 - a. Title VII
 - b. Age Discrimination in Employment Act
 - c. Americans with Disabilities Act
- G. Outreach: Educating the Public

III. Litigation Statistics

- A. Overview of Suits Filed
 1. Litigation Workload
 2. Filing Authority
 3. Statutes Invoked
 4. Bases Alleged
 5. Issues Alleged
- B. Suits Filed by Bases and Issues
 1. Sex Discrimination
 2. Race Discrimination
 3. National Origin Discrimination
 4. Religious Discrimination

5. Age Discrimination
6. Disability Discrimination
7. Retaliation
- C. Bases Alleged in Suits Filed from FY 1999 through FY 2003
- D. Suits Resolved
 1. Types of Resolutions and Success Rate
 2. Filing Authority
 3. Statutes Invoked
 4. Bases Alleged
 5. Issues Alleged
- E. Resources
 1. Staffing
 2. Litigation Budget
- F. Historical Summary: Tables and Charts
 1. Merits Suits Filed from FY 1994 through FY 2003
 2. Merits Suits Resolved from FY 1994 through FY 2003
 3. Total Monetary Relief from FY 1994 through FY 2003
 4. Litigation Workload from FY 1994 through FY 2003

courts throughout the country

II. Summary of Fiscal Year 2003 Accomplishments

A. Making a Difference in Today's Civil Rights Legal Practice

Much has changed in the practice of civil rights legal advocacy since the Office of General Counsel began litigating employment discrimination cases 30 years ago. The private bar has taken on a large share of employment discrimination litigation, especially since passage of the Civil Rights Act of 1991 authorizing fuller monetary remedies. Employers are more aware of their legal obligations, and it is less common to encounter evidence of overt bias. Prospective litigants may turn to mediation and other forms of alternative dispute resolution as a substitute for lawsuits to save time and money and preserve personal relationships. Many employers now require applicants and employees to sign predispute, compulsory arbitration agreements as a condition of employment, thus removing civil rights claims from judicial scrutiny and the public eye. These changes raise the question: what is the role of EEOC's litigation program in today's legal environment?

EEOC's Office of General Counsel has adapted to these changes, and brings to the table a panoply of strategies and tools that set EEOC litigation apart. We bring lawsuits on behalf of multiple victims of discrimination without having to meet class certification requirements applicable to private litigants. Through consent decrees we institute broad-based equitable remedies calculated to prevent future discrimination that private litigants have less incentive to pursue. We bring cases that have the potential to develop the law in the public interest, and through our amicus curiae program offer our views and expertise to courts deciding issues of public importance in private litigation. We publicize the results of our litigation so that others can learn of their rights and obligations under the law and the potential consequences of

noncompliance. We maintain a litigation presence in every region of the country. We seek to remove barriers to employees' access to redress for discrimination, such as predispute, compulsory arbitration agreements that deny discrimination victims the process afforded in the federal courts. We file suit on behalf of individuals who otherwise would be compelled to bring their claims to an arbitrator rather than a court. We obtain justice for individuals who could not afford representation by the private bar as the cost of litigation continues to rise. We actively participate in outreach and technical assistance to educate employees and employers of their rights and obligations under the law. The combined effect of these efforts not only brings justice to those individuals for whom the agency obtains relief in litigation, but also strengthens the Commission's ability to resolve meritorious charges of discrimination through conciliation, mediation, and other prelitigation settlements.

B. Summary of District Court Litigation Activity

OGC resolved 347 merits suits in fiscal year 2003. Merits suits include direct suits and interventions alleging violations of the substantive provisions of the Commission's statutes and suits to enforce administrative settlements. These resolutions resulted in a monetary recovery of \$148.7 million. This amount is the highest monetary recovery in a single year in the history of the Commission's litigation program.

The table below presents the top ten cases resolved in FY 2003 by monetary recovery.

Top Ten Cases Resolved In FY 2003 By Monetary Benefits

<i>EEOC v. California Public Employees Retirement System</i>	\$50 million
<i>EEOC v. Rent-A-Center</i>	\$47 million
<i>EEOC v. Lutheran Medical Center</i>	\$5.4 million
<i>EEOC v. Foot Locker</i>	\$3.5 million
<i>EEOC v. TIC-The Industrial Company</i>	\$2.5 million
<i>EEOC v. Simat, Helliesen & Eichner</i>	\$2.3 million
<i>EEOC v. Gulfstream Aerospace</i>	\$2.2 million
<i>EEOC v. South Beach Beverage</i>	\$1.8 million
<i>EEOC v. DeCoster Farms</i>	\$1.5 million
<i>EEOC v. Anchor Coin</i>	\$1.5 million

These 347 resolutions had the following characteristics:

- 123 cases resulting in remedies for multiple aggrieved individuals
- 256 Title VII suits
- 48 ADA suits
- 28 ADEA suits
- 2 EPA suits
- 13 concurrent suits (suits filed under more than one statute), including 10 with EPA claims

OGC filed 361 merits suits in FY 2003. Of the suits filed, 360 were direct suits and 1 was an action to enforce a conciliation agreement. OGC also filed 29 subpoena enforcement actions and 3 preliminary relief actions.

These 361 suit filings had the following characteristics:

- 126 cases brought on behalf of multiple aggrieved individuals
- 277 Title VII suits
- 21 ADEA suits
- 46 ADA suits
- 17 concurrent suits, including 10 with EPA claims

FY 2003's unprecedented monetary recovery provided substantial compensation for victims of employment discrimination. However, monetary relief is not the only measure of the success of EEOC's litigation program. This summary of FY 2003 accomplishments highlights those activities that best describe our contributions to remedying and deterring discrimination in today's civil rights legal environment. We first discuss the results obtained through suits seeking relief for multiple aggrieved individuals and our focus on obtaining broad-based, prospective equitable relief. We next detail our efforts to protect access to the civil rights enforcement mechanisms. We then discuss how we maintain a presence nationwide, featuring the most significant of our individual case resolutions. Next we review our law development efforts through activity in the federal and state appellate courts, both as amicus curiae and in our own litigation. Last, we present our efforts to educate the public on legal rights and responsibilities.

<http://archive.eeoc.gov/litigation/03annrpt/index.html#IIB>